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In re Application of

FEB 15 2011

Miesel, et al.

OFFICE OF PETITIONS

Application No. 10/678,402

: DECISION ON PETITION

Filed: October 3, 2003

Attorney Docket No. **009.6001 (P-11290.00)**

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181(a), filed November 25, 2010.

The decision mailed January 4, 2011, is **vacated**¹.

The petition is **granted**.

This application was held abandoned January 31, 2010, after no reply was received to the non-final Office action mailed October 30, 2009. The notice set forth a shortened statutory period of reply of three months from its mailing date. No response was received within the allowable period and the application became abandoned on January 31, 2010. A Notice of Abandonment was mailed May 28, 2010. The instant petition was filed on November 25, 2010. Petitioner maintains that the notice of October 30, 2009, was never received.

When, as in this case petitioner is arguing that an Office communication was not received, petitioner must establish non-receipt of the Office communication in accordance with section 711.03(c) of the *Manual of Patent Examining Procedure* that requires the following:

To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should

¹ The undersigned was able to access the ARTIFACT document filed July 23, 2010. Consequently, the petition filed November 25, 2010, is grantable in view of the contents of the ARTIFACT.

establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required. A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

Petitioner has met the burden of proof as established by Section 711.03(c)(II) of the MPEP. The holding of abandonment is, therefore, withdrawn.

The application file is being forwarded to the Technology Center GAU 3762 for further processing that will include re-mailing the non-final Office action and resetting of the period for reply.

Questions concerning this decision should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
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Office of Petitions